



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 16th November, 2023**Date of Decision: 4th January, 2024*

+

CM(M) 803/2023 & CM APPL. 25057/2023

SANJEEV LAKRA

..... Petitioner

Through: Mr. Karan Veer Tyagi, Advocate

versus

BHIM SINGH

..... Respondent

Through: Mr. Shiv Charan Garg and Mr. Imran Khan, Advocates

%

CORAM:**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J:**

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 04.02.2023 passed by the ADJ West District, Tis Hazari Courts, Delhi ('Trial Court') in Civil Case No. 42/2022 titled as '**Bhim Singh v. Sanjeev Lakra**', wherein the application dated 18.11.2022 ('amendment application') filed by the Petitioner herein under Order VI Rule 17 of Code of Civil Procedure, 1908 ('CPC') seeking amendment of the written statement was dismissed.

1.1 The Petitioner herein is the defendant and the Respondent herein is the plaintiff in the civil suit, pending adjudication before the Trial Court. For ease of reference, the parties are being referred to by their original rank and status as was before the Trial Court.

1.2 The plaintiff has filed the civil suit under The Specific Relief Act, 1963, seeking decree of specific performance of the Agreement to Sell dated



18.11.2021 ('ATS') and issuance of directions to the defendant to execute and register the sale deed in favour of the plaintiff with respect to property bearing plot no. 608/2/A, Khasra No. 608/2, situated within the extended Lal Dora, Mundka Village, Delhi - 110041, measuring 250 sq. yards ('suit property').

1.3 The plaintiff has contended that the parties herein executed the ATS for sale of the suit property for a sale consideration amount of Rs. 35,00,000/- and the plaintiff has paid part consideration of Rs. 5,00,000/-. The plaintiff has alleged that the defendant refused to perform the ATS and as a result, the plaintiff filed the civil suit on 10.01.2022.

1.4 The civil suit was registered on 11.01.2022, summons was issued on 13.01.2022 and were served to the defendant on 28.01.2022. The defendant filed its written statement ('original written statement') to the civil suit on 07.07.2022, wherein the defendant denied holding negotiations for sale of the suit property and categorically denied the execution of ATS as well as receipt of the part consideration of Rs. 5,00,000/-. In fact to buttress the submission of non-execution of ATS, it is pleaded that the defendant never wanted to sell the suit property to the plaintiff.

The plaintiff has elected not to file replication to the original written statement as recorded by the Trial Court.

1.5 By order dated 01.09.2022, issues were framed in the civil suit and the matter was listed for plaintiff's evidence on the next date of hearing i.e., 09.11.2022. It is at this advance stage, on 19.11.2022, the application seeking amendment of the original written statement was filed by the defendant.

1.6 The Trial Court vide impugned order dated 04.02.2023 dismissed the



amendment application on the grounds that: - (i) pleadings in the civil suit have been completed, (ii) the matter is at the stage of plaintiff's evidence since 01.09.2022 and (iii) if the amended written statement is taken on record, it would change the nature of the trial.

Arguments on behalf of the Petitioner i.e., defendant

2. The learned counsel for the Petitioner i.e., defendant states that the original written statement was filed on 07.07.2022 by the previous counsel. However, after the present counsel was engaged and explained the contents of the written statement, the defendant learnt that correct facts had not been set out in the original written statement. He states that therefore to set the record straight, the defendant seeks permission to incorporate a 'new' paragraph as paragraph no. 6 of preliminary objections and rectify paragraph no. 4 of reply on merits in the original written statement.

2.1 He states that the facts now sought to be placed on record (by way of amendment) as they existed on 04.10.2021 are material facts which would explain the circumstances on which the ATS was executed between the parties.

2.2 He states that the amendments proposed to the original written statement are permissible as it would assist the Court in deciding the real controversy. He states that though issues have been framed on 01.09.2022, the recording of evidence has not begun and therefore, the amendment application ought to have been allowed by the Trial Court as per the law settled by Supreme Court in ***Andhra Bank v. ABN Amro Bank N.V. And Ors.***¹ and ***Ganesh Trading Co. v. Moji Ram***².

¹ (2007) 6 SCC 167

² (1978) 2 SCC 91



Arguments on behalf of the Respondent i.e., plaintiff

3. In reply, the learned counsel for the Respondent i.e., plaintiff states that the fact with respect to the alleged loan availed from M/s Agriwise Finserv Ltd. was not disclosed to the plaintiff at the time of execution of the ATS as is evident from the terms of the ATS (more specifically, clause 6 therein). He states that pertinently, the existence of the alleged loan was not even disclosed in the original written statement filed on 07.07.2022.

3.1 He states that in the original written statement dated 07.07.2022 the defendant has categorically denied execution of the ATS. He states by way of the proposed amendment, the defendant is in a U-turn now admitting the execution of the ATS and receipt of the part consideration of Rs. 5,00,000/-; however, attempting to set-up an altogether new defence to justify the non-performance of the ATS. He states that by way of the proposed amendment the defendant is seeking to change his defence completely and in fact, this change of stand makes him liable for perjury. He refers to the reply in the original written statement more specifically paragraph nos. 3 and 4 of reply on merits of the original written statement to buttress his submission of the change in defence. He relies upon the judgment of this Court in **Wg. Cdr. I. Kovoov (Retd.) v. Mahalakshmi Land and Finance (P) Ltd.**³ to oppose the amendment

3.2 He states that the alleged documents annexed with the amendment application all pre-date the ATS as well as the filing of the original written statement; and were therefore, admittedly in the knowledge, custody and possession of the defendant. He states that the non-filing as well as non-

³ 1998 SCC OnLine Del 188



mentioning in the original written statement of the said documents and facts is, therefore, deliberate.

3.3 He states that by way of the amendment, the defendant proposes to totally change his stand and the defence; the new facts pleaded are totally contradictory to the original written statement. He states that the proposed amendments are illegal and against the purview of Order VI Rule 17 CPC.

Analysis and findings

4. This Court has considered the submissions of the learned counsels for the parties and perused the record.

5. It is settled law that ordinarily the Courts are liberal in permitting amendments to the written statement. The Courts have held that addition of a new ground of defence or substitution or alternation of a defence for taking inconsistent pleas in the written statement is not objectionable.

However, even for a written statement the Courts have refrained from permitting amendments which are not bona fide or work serious prejudice or injustice to the other side or amendments which are aimed at overreaching the Court. In this regard, it would be relevant to refer to the judgment of the Supreme Court in ***B.K. Narayana Pillai v. Parameswaran Pillai and Another***⁴, wherein the Supreme Court held that inconsistent and contradictory allegation in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The relevant portion of the judgment reads as under:

“4. ... The principles applicable to the amendments of the plaint are equally

⁴ (2000) 1 SCC 712



applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates (sic results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.”

(Emphasis Supplied)

6. The scope of permissibility of amendment to a written statement was succinctly explained in a decision of this Court in ***Sugeeta Chhabra v. Harish Nayar***⁵, wherein the learned Single Judge (Hima Kohli, J. as her Ladyship then was) held that an amendment which seeks to change the nature of the original defence, set up an entirely new case which was not taken in the original written statement cannot be permitted. The relevant portion of the judgment reads as under:

“25. By invoking the provisions of Section 6 of the Act, the defendant now claims that as it is the case of the plaintiff that Sh. R.G. Nayar had not left any will, the suit premises would be divided by granting 7/10th share to Shri R.G. Nayar HUF and 3/10th share to the plaintiff. If the aforesaid plea of the defendant is permitted to be incorporated in his written statement, it would undoubtedly result in permitting him to renege from the admissions made by him in the original written statement as to the absolute ownership of the suit premises and set up an entirely new case to the prejudice of the plaintiff,

⁵ 2013 SCC OnLine Del 146



which is impermissible in law. Further, the aforesaid amendment, if allowed, would result in the defendant taking mutually destructive pleas, which cannot be permitted.

26. There is merit in the submission made by the counsel for the plaintiff that if permission is granted to the defendant to amend the written statement, as prayed for, then it shall cause serious injustice to the plaintiff inasmuch as it will result in permitting the defendant to take contradictory and inconsistent pleas in negation of the position taken in his original written statement. wherein he had averred that Mr. R.G. Nayar had left a will, whereunder, his son, Shri Raghav Nayar, was bequeathed one half undivided share in the suit property. Such a bequest could have taken place only on the premise that the suit property was a self-acquired property of late Shri R.G. Nayar and not if it was a HUF property as now sought to be claimed by the defendant. Similarly, the validation of the claim of the defendant to half undivided share of his mother, Smt. Sharda Nayar in the suit premises on the basis of devolution made by a will executed by her in his favour would be sustainable only if the suit property was an absolute property of the parents of the parties and not if it was purchased by Shri R.G. Nayar as a karta of a hindu undivided family, as claimed in the proposed amendments.

27. In the teeth of the aforesaid categorical stand taken by the defendant in his written statement, it does not lie in his mouth to turn around and urge that he may be permitted to amend the written statement and incorporate therein facts to the effect that the suit property had been purchased out of HUF funds and that Sh. R.N. Nayar was a Karta of a HUF and upon his demise, the defendant had become the Karta of the said HUF. This would amount to permitting the defendant to change the very nature of his original defence and set up an entirely new case, which had not been taken by him in the written statement as originally filed. In fact, it is not merely a case of taking inconsistent pleas or addition of new grounds of defence, but an attempt on the part of the defendant to build up an entirely different and mutually incompatible defence."

(Emphasis Supplied)

7. In the facts of this case, the suit has been filed by the plaintiff seeking specific performance of the ATS, on the specific plea that part consideration of Rs. 5,00,000/- stands paid. The defendant in the original written statement categorically denied holding negotiations for sale and consequently denied the execution of ATS as well as receipt of the part consideration of Rs.



5,00,000/-. The written statement has been affirmed on oath and is duly supported by an affidavit.

8. The defendant by way of the amendment has proposed to add preliminary objection no. 6 and amend paragraph 4 of reply on merits of the original written statement. In the proposed amendments, the defendant admits holding negotiations for the sale, execution of the ATS and receipt of the part consideration of Rs. 5,00,000/-. However, by way of the amendments the defendant is now seeking to explain the circumstances in which he has elected to not perform this ATS.

9. In the opinion of this Court, this change of stand by the defendant amounts to changing the very nature of the original defence and setting up an entirely new case, which had not been taken by him in the original written statement. The test applied for declining the amendment in *Sugeeta Chhabra v. Harish Nayar* (supra) is squarely applicable to this case, as in this matter as well the defendant is not merely taking inconsistent pleas or adding new grounds of defence, but the attempt on the part of the defendant is to set up an entirely different and mutually incompatible defence.

10. The amendments to the written statement sought by the defendant to paragraph 4 of reply on merits if allowed, would render the entire written statement inconsistent as the para-wise reply to remaining paragraphs including paragraph nos. 3 and 6 would be wholly inconsistent with the new defence proposed to be canvassed. The consequence would be that the trial would be delayed and embarrassed causing prejudice to the plaintiff. The wholly inconsistent written statement would in fact, make it difficult for the Trial Court to adjudicate the disputes and would lead to travesty of justice.

11. The judgments relied upon by the defendant are not applicable to the



facts of this case. In the case of *Andhra Bank v. ABN Amro Bank N.V.* (supra) the defendant was permitted to amend its pleading as it sought to raise an additional defence in the written statement, which was not mutually destructive with the existing defences. In the case of *Ganesh Trading Co. v. Moji Ram* (supra) the Supreme Court was dealing with scope of amendment to a plaint. However, even in the said case the Court observed that amendments which unjustifiably injure the rights accrued to the opposite party cannot be permitted.

12. The plea of inadvertent mistake committed by the defendant and the previous counsel for defendant in not stating/mentioning the correct facts in the original written statement cannot be treated as a bonafide/legitimate ground for permitting amendment to the original written statement. The defendant has not made any averment as to how the defendant was precluded from stating the aforesaid amendments in the original written statement at the initial stage itself. In fact, this Court finds merit in the submission of the counsel for the plaintiff that the defendant has taken a false stand in the original written statement by denying the execution of ATS and receipt of the part consideration of Rs. 5,00,000/-.

13. In view of the facts discussed hereinabove, this Court, therefore, finds no infirmity in the impugned order of the Trial Court dismissing the amendment application and the same is correct in law and fact. There is no error of jurisdiction or any other error warranting exercise of supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

14. This petition is without any merit and the same is accordingly dismissed. Pending applications stands disposed of.



MANMEET PRITAM SINGH ARORA, J
JANUARY, 4 2024/msh/hp/MG